

**§ 890.1049**

**5 CFR Ch. I (1–1–09 Edition)**

(4) There is no basis under this subpart for continuing the debarment.

(c) *Waiver applies only in the defined service area.* A limited waiver applies only to items or services provided within the defined service area where a provider is the *sole community provider* or *sole source of essential specialized services*.

(d) *Governmentwide effect continues.* A limited waiver applies only to a provider's FEHBP transactions. Even if OPM waives a debarment for FEHBP purposes, the governmentwide effect under section 2455 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) continues for all other Federal agencies' procurement and nonprocurement programs and activities.

(e) *Waiver rescinded if circumstances change.* OPM shall rescind the limited waiver when any of its underlying bases no longer apply. If OPM rescinds the limited waiver, the provider's debarment shall resume full effect for all FEHBP transactions. Events warranting rescission include, but are not limited to:

(1) The provider ceases to furnish items or services in the defined service area;

(2) Another provider begins to furnish equivalent items or services in the defined service area, so that the provider who received a waiver is no longer the sole provider or sole source; or

(3) The actions that formed the basis for the provider's debarment, or similar acts, recur.

(f) *Effect on period of debarment.* The minimum period of debarment is established when the debarment is initially imposed. A subsequent decision to grant, deny, or rescind a limited waiver shall not change that period.

(g) *Application is necessary for reinstatement.* A provider who has received a limited waiver shall apply for reinstatement at the end of the debarment period, even if a limited waiver is in effect when the debarment expires.

(h) *Finality of debarring official's decision.* The debarring official's decision to grant or deny a limited waiver is final and not subject to further administrative review or reconsideration.

**SPECIAL EXCEPTIONS TO PROTECT  
COVERED PERSONS**

**§ 890.1049 Claims for non-emergency items or services furnished by a debarred or suspended provider.**

(a) *Covered individual unaware of debarment or suspension.* FEHBP funds may be paid for items or services furnished by a debarred or suspended provider if, at the time the items or services were furnished, the covered individual did not know, and could not reasonably be expected to have known, that the provider was debarred or suspended. This provision is intended solely to protect the interests of FEHBP-covered persons who obtain services from a debarred or suspended provider in good faith and without knowledge that the provider has been sanctioned. It does not authorize debarred or suspended providers to submit claims for payment to FEHBP carriers.

(b) *Notice sent by carrier.* When paying a claim under the authority of paragraph (a) of this section, an FEHBP carrier must send a written notice to the covered individual, stating:

(1) That the provider is debarred or suspended and is prohibited from receiving payment of FEHBP funds for items or services furnished after the effective date of the debarment or suspension;

(2) That claims may not be paid for items or services furnished by the debarred or suspended provider after the covered individual is informed of the debarment or suspension;

(3) That the current claim is being paid as a legally-authorized exception to the effect of the debarment or suspension in order to protect covered individuals who obtain items or services without knowledge of their provider's debarment or suspension;

(4) That FEHBP carriers are required to deny payment of any claim for items or services rendered by a debarred or suspended provider 15 days or longer after the date of the notice described in paragraph (b) of this section, unless the covered individual had no knowledge of the provider's debarment or suspension when the items or services were rendered;

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(5) The minimum period remaining in the provider's debarment or suspension; and

(6) That FEHBP funds cannot otherwise be paid to the provider until OPM terminates the debarment or suspension.

[69 FR 9920, Mar. 3, 2004]

### **§ 890.1050 Exception to a provider's debarment for an individual enrollee.**

(a) *Request by a covered individual.* Any individual enrolled in FEHBP may submit a request through their FEHBP carrier for continued payment of items or services furnished by a debarred provider to any person covered under the enrollment. Requests shall not be accepted for continued payments to suspended providers.

(b) *OPM action on the request.* OPM shall consider the recommendation of the FEHBP carrier before acting on the request. To be approved, the request shall demonstrate that:

(1) Interrupting an existing, ongoing course of treatment by the provider would have a detrimental effect on the covered individual's health or safety; or

(2) The covered individual does not have access to an alternative source of the same or equivalent health care items or services within a reasonably accessible service area.

(c) *Scope of the exception.* An approved exception applies only to the covered individual(s) who requested it, or on whose behalf it was requested. The governmentwide effect of the provider's debarment under section 2455 of the Federal Acquisition Streamlining Act (Pub. L. 103-355) is not altered by an exception.

(d) *Provider requests not allowed.* OPM shall not consider an exception request submitted by a provider on behalf of a covered individual.

(e) *Debarring official's decision is final.* The debarring official's decision on an exception request is not subject to further administrative review or reconsideration.

## REINSTATEMENT

### **§ 890.1051 Applying for reinstatement when period of debarment expires.**

(a) *Application required.* Reinstatement is not automatic when the minimum period of a provider's debarment expires. The provider shall apply in writing to OPM, supplying specific information about the reinstatement criteria outlined in paragraph (c) of this section.

(b) *Reinstatement date.* A debarred provider may submit a reinstatement application not earlier than 60 days before the nominal expiration date of the debarment. However, in no case shall OPM reinstate a provider before the minimum period of debarment expires.

(c) *Reinstatement criteria.* To be approved, the provider's reinstatement application shall clearly demonstrate that:

(1) There are reasonable assurances that the actions resulting in the provider's debarment have not recurred and will not recur;

(2) There is no basis under this subpart for continuing the provider's debarment; and

(3) There is no pending criminal, civil, or administrative action that would subject the provider to debarment by OPM.

(d) *Written notice of OPM action.* OPM shall inform the provider in writing of its decision regarding the reinstatement application.

(e) *Limitation on reapplication.* If OPM denies a provider's reinstatement application, the provider is not eligible to reapply for 1 year after the date of the denial.

### **§ 890.1052 Reinstatements without application.**

OPM shall reinstate a provider without a reinstatement application if:

(a) *Conviction reversed.* The conviction on which the provider's debarment was based is reversed or vacated by a final decision of the highest appeals court with jurisdiction over the case; and the prosecutorial authority with jurisdiction over the case has declined to retry it, or the deadline for retrial has expired without action by the prosecutor.

(b) *Sanction terminated.* A sanction imposed by another Federal agency, on